

that the presumption of 'occupier' did not apply to the accused, the presumption of knowledge of the concealment of the drugs under section 37(g) did not arise either.

Thirdly, the quantities of drugs found were insufficient to raise the presumption of trafficking under section 37(da):

Drug	Found in premises	Minimum Quantity under section 37(da)
Morphine	86.3 grammes	100 grammes
Chandu	550.8 grammes	1000 grammes
Chandu dross	121.6 grammes	1000 grammes

It was this fact that led to the amendment of the alleged offence. I pause here to observe that there is no change in the quantities found by the police and at the trial. This fact was known to the prosecution throughout and certainly to the Public Prosecutor when he signed the consent on November 25, 1976. The evidence did not disclose any fact of trafficking as defined in section 2 other than that of concealment. As the evidence stood it was insufficient to support a charge under section 39B(1)(a).

Turning now to the amended charge. Packing drugs in small packets is preparatory to trafficking within the meaning of section 39B(1)(c) but there was no evidence that the accused packed these drugs or that she had anything to do with them.

The drugs were certainly concealed under the kitchen at TBG 1306 Jalan Harper. Who concealed the drugs there? I found as a fact that the accused did not.

Solicitors: *Radzi bin Tan Sri Sheikh Ahmad.*

SOUTH EAST ASIA BRICKWORKS SDN. BHD. v. MARIA ANTONETTE

[A.C.J. (Abdul Hamid J.) June 14, 1974]

[Kuala Lumpur — Civil Appeal No. 2 of 1974]

Contract — Building contract — Agreement for sale of house — Refusal of purchaser to accept key on ground that "municipal authorities had not yet granted certificate of fitness for occupation" — Whether reasonable.

Housing Developers — House ready for occupation — No certificate of fitness — Whether purchaser's refusal to accept key reasonable.

The appellants were housing developers. By a standard form of agreement they sold one of the houses to the respondent. When the house was ready for occupation the respondent refused to accept the keys on the ground that the municipal authorities had not yet granted the appellants a certificate of fitness for occupation. She then sued the appellants in the Magistrate's Court for damages for delay and succeeded. The appellants appealed.

Held: the respondent's contention that the house must not only be completed in the sense that it was fit for human habitation but must also be equipped with a certificate of fitness for occupation was unreasonable. The court would refuse to import a further term into the agreement.

The following authorities were cited in argument: *Key & Elphinstone*; *Conveyancing Precedents* 9th Edn. Vol. I; *Halsbury's Laws of England*, 3rd Edn., Vol. 8, *Lewis v. Hoare* 44 L.T. 66; *Miller v. Cannon Hill Estates* [1931] 2 K.B. 113; *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.* [1935] A.C. 524; *Herne Bay Steam Boat Co. v. Hutton* [1903] 2 K.B. 683.

A CIVIL APPEAL.

Lim Kean Chye and Tan Bu Kian for the appellants.

Respondent in person.

Abdul Hamid J. (delivering oral judgment): The dispute in this case arises on account of the construction placed by the parties in regard to the term "completion" used in Clause 2 of the agreement. Clause 2 reads as follows: —

"The purchaser shall pay to the company the balance of the said purchase price of \$14,500 on completion of the house to be notified by the company."

The respondents' contention is that not only must the house be completed in the sense that it is fit for human habitation but must also be equipped with a certificate of fitness for occupation.

Primarily the court is to determine the meaning that may reasonably be assigned to the word used. In doing so the court should construe it within the four corners of the agreement.

In the light of the various stipulations contained in the agreement I am of the view that it is unreasonable to construe the word in the manner urged upon me by the respondent. This would amount to importing a further term namely, completion on satisfaction endorsed by the City Architect issuing a certificate of fitness for occupation. To do so would in effect, be importing a term which was not within the contemplation of the parties and would have the effect of frustrating the contract.

For this reason I will allow the appeal with costs. The order of the Magistrate is hereby set aside.

Appeal allowed.

Solicitors: *Sothi & Ang.*

R & I SECURITIES SDN. v. GOLDEN CASTLE FINANCE CORPORATION (M) BHD.

[O.C.J. (Syed Othman J.) December 31, 1977]

[Johore Bahru — Originating Summons No. 171 of 1977]

Land Law — Charge — Land already charged — Refusal to give consent to second charge — Caveat lodged — Application to extend — Provision in first charge disallowing creation of further charges without consent of first chargee — National Land Code 1965, ss. 241, 323(1)(a) & 326(2).

The applicants sought for the extension of the caveat registered against a piece of land until the civil suit filed by them against the registered proprietors, *M. Bhd.* had been finally disposed of, or until the payment of security by *M. Bhd.*, or until the respondents had obtained an order for sale. *M. Bhd.* had charged the title to the applicant on December 2, 1975 as a collateral security against *H. Ltd.* paying for shares valued at \$1,999,570.25 which they had contracted to purchase. The respondents to whom title had already been charged, refused to give their consent to the second charge. As the second charge had not been registered the applicants entered a caveat.

The respondents deposed that *M.* charged the land to the respondents to secure repayment of a loan and under Clause 6 of the charge consent of the respondent must be obtained first before any further security or encumbrance could be executed over the land.